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Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

DIANA DEVORE, an Oregon resident,

Plaintiff,

v.

D.S. SERVICES OF AMERICA, INC., a Georgia  
corporation, PRIMO WATER OPERATIONS,  
INC., a North Carolina corporation, and  
RICHARD BARTELL, an individual Washington  
resident,

Defendants.

Case No. \_\_\_\_\_

**DEFENDANTS' NOTICE OF  
REMOVAL**

**TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF OREGON, PORTLAND DIVISION:**

**PLEASE TAKE NOTICE THAT** Defendants respectfully remove this action from the Multnomah County Circuit Court of the State of Oregon, where it is currently pending, to the United States District Court for the District of Oregon, Portland Division. This Notice is submitted pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446.

As grounds for removal, Defendants state as follows:

### **TIMELINESS OF REMOVAL**

1. On or about June 16, 2022, Plaintiff Diana Devore filed a complaint against Defendants in the Multnomah County Circuit Court of the State of Oregon. A copy of the complaint is attached as Exhibit A to this Notice.

2. On June 22, 2022, Plaintiff served DS Services of America, Inc. (“DS Services”).

3. On June 22, 2022, Plaintiff served Primo Water Operations, Inc. (“Primo Water”).

4. Substituted service was attempted on defendant Richard Bartell, but on information and belief, proper service cannot be confirmed as of the date of this filing.

5. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b) because fewer than thirty (30) days have passed since DS Services and Primo Water received “through service or otherwise ... a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” See 28 U.S.C. 1446(b).

### **JURISDICTIONAL BASIS FOR REMOVAL**

6. Defendants seek to remove this case to federal court on the basis of complete diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332(c)(1).

7. Plaintiff Diana Devore is an individual person domiciled in Washington County, Oregon.

8. For purposes of diversity jurisdiction, a corporation is “deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business ... .” 28 U.S.C. § 1332(c)(1).

9. Defendant DS Services is a foreign company incorporated in Delaware with its principle place of business in Atlanta, Georgia.

10. Defendant Primo Water is a foreign company incorporated in Delaware with its principle place of business in Winston-Salem, North Carolina.

11. Defendant Richard Bartell is an individual residing in Clark County, Washington State.

12. As no Defendant is a citizen of Oregon, there is complete diversity between the Plaintiff and the Defendants. Defendants agree to and are entitled to have this cause removed from the Multnomah County Circuit Court of the State of Oregon to the United States District Court, Portland Division, the federal district where the state suit is pending. Therefore, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332.

**THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED**

13. In the Complaint, Plaintiff prays for a total sum of \$527,751.16. The amount at issue far exceeds \$75,000. Because Plaintiff is diverse from Defendants and the amount in controversy, exclusive of any interest and costs, exceeds the sum of \$75,000, this Court has original jurisdiction over the claims pursuant to 28 U.S.C. § 1332.

**PAPERS FROM REMOVED ACTION**

14. Copies of all pleadings in the action pending in Multnomah County Circuit Court are attached hereto as Exhibit A.

**NOTICE TO PLAINTIFF**

15. Defendants have served written notice of this filing on counsel for Plaintiffs as required by 28 U.S.C. § 1446(d).

**NOTICE TO STATE COURT WHERE REMOVED ACTION WAS PENDING**

16. After the filing of this Notice of Removal, Defendants will transmit a copy of this Notice of Removal to the Clerk of the Multnomah County Circuit Court of the State of Oregon, as required by 28 U.S.C. § 1446(d). A copy of that Notice is attached as Exhibit B.

**NON-WAIVER OF DEFENSES**

17. By removing this action from the Multnomah County Circuit Court of the State of Oregon, Defendants do not waive any defenses available to them or admit any of the allegations in Plaintiff's complaint. Further, Defendants reserve their rights to amend or supplement this Notice of Removal.

WHEREFORE, Defendants DS Services and Primo Water respectfully remove the above-captioned action from the Multnomah County Circuit Court of the State of Oregon the United States District Court for the District of Oregon, Portland Division.

DATED: July 21, 2022.

COZEN O'CONNOR

By: /s/ Sarah P. Pozzi

Sarah P. Pozzi, OSB No. 175313

E-mail: [spozzi@cozen.com](mailto:spozzi@cozen.com)

999 Third Avenue, Suite 1900

Seattle, Washington 98104

Telephone: 206.340.1000

Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

I further certify that the foregoing document was caused to be delivered via email and via messenger to Plaintiff's counsel of record:

Justin Johnson  
Reed Johnson  
Johnson Law, P.C.  
1323 NE Orenco Station Pkwy, Ste. 210  
Hillsboro, OR 97124  
Email: Justin@JohnsonLaw.com  
Reed@JohnsonLaw.com

DATED this 21st day of July, 2022.

COZEN O'CONNOR

By: /s/ Sarah P. Pozzi  
Sarah P. Pozzi, OSB No. 175313  
E-mail: spozzi@cozen.com

# EXHIBIT A

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

DIANA DEVORE,	)	
	)	No.
	)	
Plaintiff,	)	COMPLAINT
	)	
v.	)	NEGLIGENCE – PERSONAL INJURY
	)	
	)	NOT SUBJECT TO MANDATORY
DS SERVICES OF AMERICA, INC., a	)	ARBITRATION
foreign business corporation, PRIMO	)	
WATER OPERATIONS, INC, a foreign	)	JURY TRIAL DEMAND
business corporation, and RICHARD	)	
BARTELL, an individual,	)	Fee Authority ORS 21.160(1)(c)
	)	Amount claimed is \$527,751.16
	)	
Defendants.	)	
_____	)	

COMES NOW, Diana Devore, by and through her attorney of record, who alleges the following operative facts and makes the following claim(s) for relief:

1.

At all times material herein, Plaintiff Diana Devore (hereinafter “Plaintiff”) was the operator of a motor vehicle that was caused to be involved in a collision on, or around, Highway 26, at, or near, where it intersects Highway 47, which are public roadways within Washington County, Oregon and are intended for use by motor vehicles.

2.

At all times material herein, Defendant DS Services of America, Inc. (hereinafter “Defendant DS”), was a foreign business corporation conducting regular and sustained business activity within Multnomah County, and the State of Oregon, as a food and beverages company.

3.

At all times material herein, Defendant Primo Water Operations, Inc (hereinafter “Defendant Primo”), was a foreign business corporation conducting regular and sustained business activity within Multnomah County, and the State of Oregon, as a food and beverages company.

4.

At all times material herein, Defendant Richard Bartell (hereinafter “Defendant Bartell”) operated a 2007 International Delivery Truck, Indiana License No. 1015903, involved in the collision described in paragraph 8, below.

5.

Based on information and belief, at all times material herein, Defendant Bartell was employed by Defendant DS and Defendant Primo referenced in paragraph 2-3, above, and at all times mentioned, was working in the course and scope of his employment for Defendant DS and Defendant Primo.

6.

Based on information and belief, at all times material herein, Defendant Bartell was an employee or agent of Defendant DS and Defendant Primo and acting within the course and scope of his employment. Defendant DS and Defendant Primo, as principal and employer, are vicariously liable under the doctrine of *respondeat superior* for the acts and omissions of Defendant Bartell,



1 which are described more particularly in Paragraphs 8-10 below, and as such Defendant DS and  
2 Defendant Primo are liable for all resulting damages.

3 **FIRST CLAIM FOR RELIEF AGAINST DEFENDANT DS, DEFENDANT PRIMO, AND**  
4 **DEFENDANT BARTELL**  
5 **(Negligence) (Personal Injury-Auto)**

6 7.

7 Plaintiff re-alleges and therefore incorporates by reference paragraphs 1 – 6, above, as though  
8 fully set forth herein.

9 8.

10 On or about July 14, 2020, Plaintiff and Defendant Bartell were operating a motor vehicles at,  
11 or near, the location described in paragraph 1, above. Plaintiff and Defendant Bartell were traveling in  
12 opposite directions when Defendant Bartell suddenly and without warning made a left-hand turn in front  
13 of Plaintiff, causing Plaintiff to take evasive action and causing Plaintiff to collide with a guardrail.

14 9.

15 At all times material herein, Defendant Bartell was cited by the Washington County Sheriff's  
16 Office for Dangerous Left Turn.

17 10.

18 The cause of the collision and Plaintiff's bodily injury alleged herein was the negligence of  
19 Defendants DS, Defendant Primo, and Bartell, in one or more of the following ways:

- 20 a. In driving too fast given the circumstances then existing;  
21  
22 b. In failing to operate the motor vehicle as a reasonable and prudent person would given the  
23 driving conditions at the time of the collision;  
24  
25 c. In failing to maintain a proper lookout;

1 d. In making a dangerous left turn in violation of ORS 811.350; and

2 e. In failing to maintain reasonable control of the motor vehicle.

3 11.

4 As a reasonably foreseeable result of the collision and the negligence of Defendants DS,  
5 Primo, and Bartell, Plaintiff suffered a neck injury and cervical radiculopathy with neck pain and  
6 numbness and tingling in the upper extremities, which will cause her future pain, suffering, and  
7 inconvenience, as it is permanent.  
8

9 12.

10 As a reasonably foreseeable result of the collision and the negligence of Defendants DS,  
11 Primo, and Bartell, Plaintiff suffered a low back injury and lumbar radiculopathy with back pain  
12 and numbness and tingling in the lower extremities, which will cause her future pain, suffering,  
13 and inconvenience, as it is permanent.  
14

15 13.

16 As a reasonably foreseeable result of the collision and the negligence of Defendants DS,  
17 Primo, and Bartell, Plaintiff suffered headaches, dizziness, knee contusion, and muscle spasms.  
18

19 14.

20 Plaintiff's medical costs that were caused to occur as a reasonably foreseeable result of the  
21 collision and the negligence of Defendants DS, Primo, and Bartell amounted to no more than  
22 \$27,751.16 to date. Plaintiff reserves the right to amend this amount prior to or at trial.

23 ///

24 ///

25 ///

15.

As a further reasonably foreseeable result of the collision and the negligence of Defendants DS, Primo, and Bartell, Plaintiff was rendered sick, sore, ill, and incapacitated and has suffered and will continue to suffer pain, discomfort, impairment, inconvenience, stress, and interference with normal and usual activities, all to her non-economic damages in a reasonable amount to be decided by the jury and not to exceed \$500,000.00. Plaintiff reserves the right to amend this amount prior to or at trial.

**SECOND CLAIM FOR RELIEF AGAINST DEFENDANT DS, DEFENDANT PRIMO, AND  
DEFENDANT BARTELL  
(Negligence Per Se)**

16.

Plaintiff re-alleges and therefore incorporates by reference paragraphs 1 – 15 above, as though fully set forth herein.

17.

Defendant Bartell's acts described above constitute a violation of ORS 811.350 (Dangerous Left Turn). This statute was intended to protect other road users, and Plaintiff is clearly within that class of persons the legislature meant to protect.

18.

Defendant Bartell's violation of ORS 811.350 caused Plaintiff to suffer the injuries and damages described in paragraphs 11-15, above.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- a. Economic damages for past medical expenses in the amount of \$27,751.16, and Plaintiff reserves the right to amend this figure prior to or at trial;



# EXHIBIT B

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF MULTNOMAH

DIANA DEVORE,

Plaintiff,

v.

D.S. SERVICES OF AMERICA, INC., a foreign  
business corporation, PRIMO WATER  
OPERATIONS, INC., a foreign business  
corporation, and RICHARD BARTELL, an  
individual,

Defendants.

Case No. 22CV19841

**DEFENDANTS' NOTICE OF  
FILING REMOVAL**

**TO: The Clerk of the Court; and**

**TO: Plaintiff Diana Devore, by and through her attorneys of record, Justin Johnson  
and Reed Johnson of Johnson Law, PC.**

**PLEASE TAKE NOTICE** that on July 21, 2022, Defendants DS Services of America,  
Inc., Primo Water Operations, Inc. and Richard Bartell (hereinafter "Defendants"), pursuant to  
28 USC §§ 1332(a), 1441 and 1446, filed its Notice of Removal of this action, containing a  
statement of facts to show that this matter may be removed, in the office of the Clerk of United  
States District Court for the District of Oregon, Portland Division.

DEFENDANTS' NOTICE OF FILING REMOVAL - 1

LAW OFFICES OF  
**COZEN O'CONNOR**  
A PROFESSIONAL CORPORATION  
SUITE 1900  
999 THIRD AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 340-1000

1 A copy of the Notice of Removal is attached as Exhibit 1.

2  
3 DATED: July 21, 2022.

COZEN O'CONNOR

4  
5 By: /s/ Sarah P. Pozzi

Sarah P. Pozzi, OSB No. 175313

E-mail: [spozzi@cozen.com](mailto:spozzi@cozen.com)

6 999 Third Avenue, Suite 1900

7 Seattle, Washington 98104

Telephone: 206.340.1000

8 Attorneys for Defendants

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date below, the foregoing was served on the following individuals in the manner indicated:

Justin Johnson  
Reed Johnson  
Johnson Law, P.C.  
1323 NE Orenco Station Pkwy, Ste. 210  
Hillsboro, OR 97124  
Email: Justin@JohnsonLaw.com  
Reed@JohnsonLaw.com

☒ Via Messenger  
☐ Via Fax  
☐ Via U.S. Mail  
☐ Via ECF Notification  
☒ Via E-mail  
☐ Via Overnight Delivery

DATED: July 21, 2022.

/s/ Sarah P. Pozzi

Sarah P. Pozzi, OSB No. 175313  
E-mail: spozzi@cozen.com